

REMARKS

This Response is submitted in reply to the Office Action mailed on February 3, 2004. Claims 1-43 are pending in the present application.

Applicant reminds the Examiner that this case has been accorded "SPECIAL" status. According to MPEP 708.02 VIII, it must be taken up by the Examiner "... before all other categories of applications except those clearly in condition for allowance and those with set time limits ...". MPEP 708.02 further provides that "Applications which have been made special will be advanced out of turn for examination and will continue to be treated as special throughout the entire prosecution in the Office."

This Applicant is very concerned that despite being granted special status on July 3, 2002, no first action was mailed until October 10, 2002, three months later, and nineteen months after the case was first filed on March 7, 2001, and that despite an Amendment being filed on February 10, 2003 and an Interview on February 13, 2003, no final action was mailed until August 29, 2003, six and one-half months later.

Applicant respectfully submits based on the present knowledge that it has not received the advanced prosecution status to which this application is entitled. Applicant respectfully seeks that special processing status from now on.

The Examiner has issued a Final Action on August 29, 2003 and on February 3, 2004 an Advisory Action subsequent to the After Final Amendment

filed December 1, 2003. The filing of this Request for Continued Examination (RCE) renders moot the Examiner's position that the After Final Amendment raises new issues.

Entry of that Amendment is requested in this RCE. That Amendment presents claims clearly allowable on the record and stands on its own.

Regarding the Examiner's position that the amended claims referring to the "wad in direct contact with an inner surface of the container body" are not supported by the specification, Applicant respectfully and vehemently traverses this position. Applicant's position is based on two equally sound points.

First, the original disclosure clearly establishes the wad is in direct contact with the inner surface of the container body. In particular, see at the least, Figs. 1B, 2 and 3 which clearly show this recited feature.

Original claims such as 1 and 25, for example, stated the wad was positioned in the rigid container.

The original specification on page 9, lines 11-20 discloses positioning the wad of cotton candy "within a rigid container body". On page 16, lines 10-14, reference is made to the light weight of the wad not, in itself, being sufficient to produce significant forces or stress on container body 20.

The fact that the application actually and specifically SHOWS the wad in direct contact with the inside surface of the container clearly renders the Examiner's position untenable.


Second, even if the application did not specifically, directly and expressly describe the direct contact of candy wad with the container's interior surface, the entire application makes such contact inherent through the noted specification above, and the entire description decrying the use of prior art plastic bags (see Page 4, line 1-Page 7, line 23). Nowhere in Applicant's specification does there appear any description whatsoever that the wad of cotton candy is pre-packaged prior to being placed within the container. In the specification, the container, and nothing else, contains, holds and protects the candy wad. Certainly the Examiner does not, and cannot, take the position that the candy wad somehow mysteriously floats within the container body without contacting the inner surface of the container. Any other conclusion from the contents of the original application cannot be supported and is clearly off base and erroneous. Applicant reserves the right to more fully respond or brief this issue of inherency of disclosure if necessary.

The claims are clearly in condition for allowance over all prior art of record. Early examination and allowance is respectfully submitted.

Please charge Deposit Account No. 23-3000 in the amount of \$385.00 for the RCE fee required under 37 C.F.R. § 1.17(e) and \$475.00 for the three months extension fee as set forth in 37 C.F.R. § 1.136(a). Should any additional fees be required, authorization is hereby given to charge such fees to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.



David H. Brinkman, Reg. No. 40,532

2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
(513) 241-2324 - Voice
(513) 421-7269 - Facsimile